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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,569	01/28/2004	Nikolay K. Iltchev	08935-302001 / M-5090	8130
26161	7590	08/31/2007		
FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER WEINER, LAURA S	
			ART UNIT 1745	PAPER NUMBER
			MAIL DATE 08/31/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/765,569

Applicant(s)

ILTCHEV ET AL.

Examiner

Laura S. Weiner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 19-21 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-18 is/are allowed.
- 6) ☒ Claim(s) 1,3 and 7-10 is/are rejected.
- 7) ☒ Claim(s) 2 and 4-6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Group I, claims 1-18 in the reply filed on 3-16-07 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 19-21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 3-16-07.

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 1, 3, 7-10 has been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 102***

4. Claims 1, 3, 7-8 are rejected under 35 U.S.C. 102(e) as being anticipated by Daniel-Ivad et al. (7,008,723).

Daniel-Ivad et al. teaches in column 17, claim 1, a rechargeable cell comprising a cathode comprising manganese oxide, an anode comprising zinc, a separator and an electrolyte. Daniel-Ivad et al. teaches in column 6, that the cathode can comprise

manganese oxide and that electrolytic manganese oxide is suitable for use in the positive electrode with the zinc electrode. Daniel-Ivad et al. teaches that the addition of barium oxide, barium hydroxide or barium sulfate in the range of 3-15 % by weight improves the performance during discharge/discharge cycling and addition of 0.01-10% of silver or its oxides prevents pressure build-up from gassing resulting from corrosion of zinc. Daniel-Ivad et al. teaches in columns 13-14, that the electrolyte comprises KOH.

***Claim Rejections - 35 USC § 103***

5. Claims 9-10 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Daniel-Ivad et al. (7,008,723).

Daniel-Ivad et al. teaches in column 17, claim 1, a rechargeable cell comprising a cathode comprising manganese oxide, an anode comprising zinc, a separator and an electrolyte. Daniel-Ivad et al. teaches in column 6, that the cathode can comprise manganese oxide and that electrolytic manganese oxide is suitable for use in the positive electrode with the zinc electrode. Daniel-Ivad et al. teaches that the addition of barium oxide, barium hydroxide or barium sulfate in the range of 3-15 % by weight improves the performance during discharge/discharge cycling and addition of 0.01-10% of silver or its oxides prevents pressure build-up from gassing resulting from corrosion of zinc. Daniel-Ivad et al. teaches in columns 13-14, that the electrolyte comprises KOH.

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Since Daniel-Ivad et al. teaches the same battery comprising a cathode comprising an electrolytic MnO<sub>2</sub>, a conductive material such as silver oxide and a barium salt, an anode comprising zinc and an alkaline electrolyte then inherently the same service life of the battery in an intermittent discharge test is at least 2% or 3% longer than the surface life of a battery lacking the particle must also be obtained.

In addition, the presently claimed property of the same service life of the battery in an intermittent discharge test is at least 2% or 3% longer than the surface life of a battery lacking the particle would have obviously have been present once the Daniel-Ivad et al. product is provided. *In re Best*, 195 USPQ 433 (CCPA 1977).

#### ***Allowable Subject Matter***

6. Claims 11-18 are allowed.
7. Claims 2, 4-6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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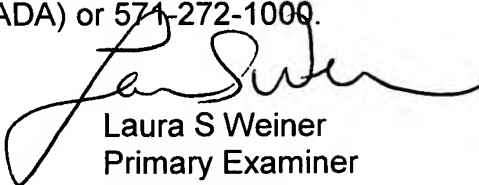
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura S. Weiner whose telephone number is 571-272-1294. The examiner can normally be reached on M-F (6:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Laura S Weiner  
Primary Examiner  
Art Unit 1745

August 22, 2007